

ADOPTION HEARING CHECKLIST

For Cultural Adoptions and Tribal Court Adoptions

2014

The following are best practices for ensuring due process for all parties involved in an adoption hearing. Your tribe's customary laws or court codes may provide more steps to follow.

Pre-Hearing Preparation

FILE: The Tribe should have a specific case file for each child being adopted, and keep that file in a secure place.

NOTICE: The court clerk (or other designated person) must notify the people **when** and **where** the adoption hearing will be, and **how** they can participate.

Unless your codes say otherwise, notice can be given any way that works (in-person, telephone, fax, certified mail, etc.). If a person cannot be contacted directly, a legal notice in the newspaper can serve as notice.

Notice of a hearing should be given as much in advance as possible, but at least 30 days is best.

If there is an adoption petition, everyone below should get a copy.

It is best if there is proof in the file that notice was given, such as a written acknowledgment of verbal notice.

Who Should Get Notice of And Attend the Adoption Hearing

- Adoptive Parents
- Parents whose rights have not been terminated, including possible fathers
- Anyone who is currently taking care of the child
- Anyone with visitation rights that could be affected by the adoption
- The child, if appropriate
- ICWA/Family Services Worker, if any
- Child's Advocate (guardian *ad litem* or court appointed special advocate), if any

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Guaranteeing Due Process

Due process is the right of the parties involved in a court case to have the court proceed in steps that will be fair to everyone.

To guarantee due process at the adoption hearing, the court or council should:

- Confirm that all parties entitled to notice received notice.
- Specify which parties are absent and how they received notice, if the hearing proceeds without them.
- Confirm that the court or council has jurisdiction to hear the case:
 - The child is eligible for tribal membership or the child's Tribe has agreed to have your Tribe do the adoption.
 - If a child is in state custody, the state must consent to the adoption taking place in tribal court.
- There may be written tribal court codes that govern adoption proceedings. If so, those codes must be followed.

Best Practice Tips

- Consents to adoption and jurisdiction are made in writing while on record during the hearing.
- VPSO, VPO, or TPO present during contested adoption proceedings.

Key Findings

The following are findings that judges or council members should make on the record at the hearing (tribal codes may specify additional findings):

- Due Process Findings (see above)
- Living parents have consented to the adoption, or there is good reason to approve the adoption without their consent (*for example – dad abandoned child at birth, got notice of the adoption, but did not respond*)
- All parties who must consent to the adoption have consented:
 - Child, if old enough that consent is required
 - Tribal Council/Court, if child is in tribal custody
 - State Child Welfare Agency, if child is in state custody;
- All consents are voluntary and informed;
- The adoption is in the child's best interest;
- The adoptive parents are able to provide for the child's physical, mental, emotional, and financial needs;
- If the child has already been placed in the adoptive home, that the child is doing well in the home;
- A home study or report, if required by tribal codes, was completed and the results were positive;
- The child's name following adoption;
- Effect of adoption on child's tribal membership status.

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Additional Findings

The following are additional findings that can also be made:

- Whether the child's natural parents will retain any ceremonial or traditional responsibilities toward the child;
- Whether the child will retain rights of inheritance from natural parents;
- Whether visitation or contact will be allowed between child and natural parents
- Whether visitation or contact will be allowed between child and biological relatives, if adopted by non-relatives.

Post-Hearing

After the adoption hearing, issue a decision in writing. Either a Resolution for cultural adoptions, or an Order.

Provide a copy to all the parties.

Complete the appropriate paperwork and submit it to the Alaska Bureau of Vital Statistics for a new birth certificate.

A copy of the Order or cultural adoption packet, along with the recording or notes from the hearing should be placed in the court file.